

PUBLIC RULEMAKING AND INFORMATIONAL HEARING
COMMISSION ON STATE MANDATES

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TIME: 1:30 p.m.
DATE: June 29, 2000
PLACE: 980 Ninth Street, Suite 300
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Proposed Amendments to California Code of Regulations,

Title 2, Administration;
Division 2, Financial Operations

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

A P P E A R A N C E S

PATRICIA HART JORGENSEN, Chief Counsel
Commission on State Mandates

PAMELA A. STONE, Senior Manager/Legal Counsel
DMG Maximus on behalf of the CSAC League of
California Cities SB 90 Committee

MARCIA C. FAULKNER, Manager, Reimbursable Projects
Office of the Auditor/Controller-Recorder
County of San Bernardino

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ERRATA SHEET

No Edits

BE IT REMEMBERED that on Thursday, the 29th day of June, 2000, commencing at the hour of 1:42 p.m., thereof, at the office of the Commission on State Mandates, 980 Ninth Street, Suite 300, Sacramento, California, before me, Yvonne K. Fenner, a Certified Shorthand Reporter in the State of California, the following proceedings were had:

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MS. HART JORGENSEN: Good morning. I'm Patricia Hart, Chief Counsel for the Commission on State Mandates. It's 1:30 on Thursday, June 29th, 2000, in the conference room of the Commission on State Mandates, 980 Ninth Street, Suite 300, Sacramento, California.

This hearing has been convened to receive public comments on a proposed rulemaking action by the Commission on State Mandates. The Commission proposes to amend its regulations by adding section 1183.09, 1183.21, and 1188.31 to provide a procedure for the Commission to dismiss pending actions under circumstances where a claimant or party has failed to reactivate a claim or request within one year after its request for postponement or placement on inactive status was granted.

Under the rulemaking provisions of the California Administrative Procedure Act, this is the time and place set for the presentation of statements, arguments, and contentions, orally or in writing, for or against changes to the Commission's regulations. Notice of the proposed action has previously been published and sent by mail to interested parties.

This is a quasi-legislative hearing in which the Commission carries out a rulemaking function delegated to it by the legislature. Witnesses presenting testimony at this hearing will not be sworn in nor will we engage in cross-examination of the witnesses. We will take under submission all written and oral statements submitted or made during this hearing. We will respond to these comments in writing in the final statement of reasons.

This entire APA rulemaking hearing will be recorded by a certified shorthand reporter. The transcript of the hearing and all exhibits and evidence presented during the hearing will be made part of the rulemaking record. The record for this hearing is being kept open until the close of business today,

Thursday, June 29th, 2000, in order to receive written comments from interested parties.

If you have brought written comments with you to submit during the hearing, please give them to me before we adjourn. When you entered the room, you were offered the attendance sheet to sign your name and a space to indicate if you want to make oral comments on the proposed regulations. Please sign the attendance sheet even if you do not plan on speaking.

We will notify all interested persons of any changes to the proposed regulations or about any new material relied upon in proposing these regulations prior to adoption. Such notice will be sent to everyone who submits written comments during the written comment period, anyone who testifies today, and everyone who asks for such notification.

While no one may be excluded from participation in these proceedings for failure to identify themselves, the names and addresses on the attendance sheet will be used to provide the notice and made part of the rulemaking record.

We'll call upon you to present your oral comments in the order you signed the attendance sheet. After we hear from everyone who signed in, we will hear from any latecomers or anyone who wishes to be heard.

When you come forward to speak, we ask that you do certain things so that the audience and the reporter can hear your comments. First, we ask that you come to this end of the table. Second, please begin by stating your name and identifying the organization you represent.

At this point the rulemaking record includes the following: The notice of proposed action published in the {UOn}California Regulatory Notice Register{UOff} on March 10th, 2000; the initial statement of reasons; the proposed text; the statement of mailing, the rulemaking packet to interested parties and the mailing list; the economic and fiscal impact statement (Form 399); and written comments received to date.

These proposed regulations were duly noticed more than 45 days prior to today's hearing. Copies of the notice, the text of the proposed regulatory action, the initial statement of reasons, and the proposed rulemaking calendar were mailed to all interested parties who requested rulemaking notices.

At this point we will begin public testimony.

And, Marcia, since you signed first -- didn't you?

MS. FAULKNER: No, Pam did. I did that deliberately.

MS. HART JORGENSEN: Pam, would you like me to write on the board here?

MS. STONE: No. No.

MS. HART JORGENSEN: You can just present your comments.

We also have Shirley Opie present in the room. Shirley, you can come to the table, if you'd like.

MS. STONE: My name is Pamela Stone, and I'm here on behalf of the CSAC League of California Cities SB 90 Committee, which has requested and authorized that I make this presentation to you. The committee has reviewed your proposed regulations and discussed it and has some issues that it would like to address the Commission concerning these proposed regulations.

I think the first thing that's important to note is that any -- and these comments initially are towards test claims -- that a test claim is really a quasi class action concept wherein one local agency acts on behalf of all others similarly situated with the appropriate costs in the event that a program is determined to be a mandate.

The problem with the issue of dismissal of test claims, as well as requests for amendments of parameters and guidelines, is the fact that most public entities are not on the mailing list as interested persons or parties and therefore the only methodology by which they would have notification of the dismissal of a particular matter is either through attendance at a CSAC League meeting or through receipt of a monthly newsletter -- which generally come out monthly, but not always -- from either the CSAC SB 90 Service or the League's SB 90 Service. Those are the two methodologies by which information is generally circulated.

Most entities do not want to be on the mailing list for everything because of the issue of handling that large amount of paper and also the increased mailing costs and burden on other parties as well as upon the Commission.

The -- when there is a test claim that may be dismissed and other entities don't know about it, they do not have the opportunity to, first of all, obtain the requisite materials in order to see what has transpired in the past; second of all, which is extremely important, is to evaluate the merits of the position taken by the original claimant. That is a process and procedure which does take a period of time before, No. 3, the decision to assume test claimant status is made, much less obtaining authorization so to do.

Because of the fact that this is a quasi test claim -- quasi class action process, it is incumbent that there be an adequate period of time for notification of the intention to proceed in order that if there another entity who is willing and able to step up to the plate to assume the responsibilities of claimant, that there be the opportunity so to do.

Furthermore, it's crucial that there be adequate time for evaluation. Otherwise what will occur is that you may have a test claimant stepping up to the plate to assume the responsibilities of league claimant, only to realize that the claim really should not be pursued. So there needs to be that period of time for evaluation.

There's another reason why --

MS. HART JORGENSEN: Can I interrupt?

MS. STONE: Please.

MS. HART JORGENSEN: What do you consider to be an adequate time to put that into consideration?

MS. STONE: We were suggesting 90 days for the intention to dismiss before the matter is calendared on the dismissal calendar, because it takes a minimum of 60 days if the information is going to be set forth in the newsletter for publication and mailing, and that would give someone 30 days within which to hopefully do an evaluation and respond.

Then we also had a question with respect to a possible hearing on the dismissal of a test claim. As this is presently set forth, assuming somebody wishes to step forward and assume the responsibilities of test claimant, it is not as a matter of right. It would be within the jurisdiction of the Commission to determine whether or not that party would be granted the ability to step

forward and assume it. There would have to be argument in public hearing before the Commission as to the benefits or detriment and whether or not there would be any prejudice to any particular party because of the process of taking over a test claim.

We understand and are extremely cognizant of the need for the Commission to clean up some of its backlog, and I think that is -- that concept is shared by both local government as well as the Commission.

Another issue for -- or another reason why there needs to be some period of time for consideration -- and this also comes from experience in the public sector -- is that frequently you may have a change in administrations within a department and you may have a new department head or division head who is not familiar with the SB 90 process.

Although we think this is the universe, unfortunately, it's not as well known or understood by others, and it may require a period of time to be able to work with new personnel to be able to get them on board and provide the requisite information. As much as we do test claims and work in this area, absent the participation and input from program individuals, which is imperative, we cannot fulfill our jobs bringing forth -- bringing forth test claims and other such matters.

One other issue I just wish to touch on very briefly is that we believe that there should be a provision to have almost a totaling of the period of limitation within which one can consider a matter being inactive, and that is when one is waiting for a court ruling.

If you have a mandate claim that is contingent upon the outcome in a matter which is presently in litigation, it makes absolutely no sense whatsoever to pursue it when a decision will be dispositive. I do not believe that it is either in the claimant's best interest or the Commission's best interest to devote hundreds of hours of staff time and research to work on a matter which will be essentially resolved by a pending court matter.

And therefore I would request that any period of time when a test claim is placed in abeyance, whether it be by the claimant, a state agency, or the Commission, pending determination by a court, that that not be considered for the purposes of any particular type of dismissal matter.

We do appreciate the ability we've had to comment on your proposed regulations. We believe that this is a good concept. We would just request that since the -- since not all entities have instantaneous access to information, that there be a greater period of time for consideration as to whether or not another entity will take one over prior to the matter being calendared for dismissal.

And thank you for the opportunity to speak.

MS. HART JORGENSEN: Thank you, Pam.

Next.

MS. FAULKNER: I'm Marcia Faulkner with the County of San Bernardino. I absolutely agree with everything that Pam Stone has indicated. I also wanted to share a little perspective from a local agency standpoint.

First of all, when another county or another city or another local agency is pursuing a test claim, due to the class action nature of that test claim we as San Bernardino County do not need to follow and closely monitor every step of the process. To do so would require us to be listed as an interested party, for all parties to include us in all of their mailings, and all of the paper flow that would come out of that process. So -- plus we would not have the time to follow up these details.

So we're concerned that if a particular test claim is going to be dismissed, there needs to be adequate notice. I, for one, have been actively involved with the CSAC SB 90 Committee, and it wasn't until someone said something to me that I realized one of the letters had been sent from the Commission to another county indicating intent to dismiss. And I still have not received any formal notice on that at all. So I'm concerned about the notification process.

I'm concerned about the length of time. I'm also concerned that if an agency does want to take on or take over a test claim, we need the opportunity to evaluate whether it's a meritable test claim or not.

We also are concerned because according to the procedures that are outlined here, it looks like if we were to take over a test claim, we would need to provide written comments to all the parties and the Commission. And it sounds

like -- it's not clear, but it sounds like we would need to provide arguments, for example, on why we would like to take over a test claim or why the Commission shouldn't dismiss the test claim. So we'd like a clearer process for that.

And that concludes my comments.

MS. HART JORGENSEN: Thank you. Off the record.

(Discussion held off the record.)

MS. HART JORGENSEN: I want to thank you all for your attendance and thank you for the comments. As we indicated before, they will be considered when we look at the rulemaking package. I'm sure that some good changes are going to come out of this.

If there are no other comments, I think we should close the hearing at this point.

Thank you, again.

(Whereupon the hearing concluded at 1:58 p.m.)

REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 11th day of July, 2000.

License No. 10909

{UOn}JOB SHEET{UOff}

Job #00-422B

Reporter: YVONNE K. FENNER

CSR #10909

Date of Hearing: June 29, 2000

Day: Thursday

Delivery date: 7/11/00

COMMISSION ON STATE MANDATES

Case Number: (ITEC job)

Where Taken: 980 Ninth Street, Suite 300, Sacramento

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{UOff}

Public Rulemaking & Informational Hearing

Commission on State Mandates

Proposed Amendments to CCR Title 2, Administration;

Division 2, Financial Operations

Scheduled: 1:30 p.m.

Actual: 1:42 p.m. to 1:58 p.m.

Pg # of cover title pg: 1

Pg # of 1st pg of text: 4

Pg # of last pg: 15

{UOn}

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{UOn}EXHIBITS{UOff}:

Total Number of pgs: (none)

{UOn}

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{UOn}NOTIFICATION OF WITNESS{UOff}:

{UOn}

{UOff}

{UOn}INSTRUCTIONS RE DISPOSITION OF ORIGINAL{UOff}

(X) Forward to Ms. Hart Jorgensen by 7/13/00.

Delv'd by {UOn} {UOff}

Date {UOn} {UOff}

BILLING INFORMATION

O + 1

{UOn} APPEARANCES {UOff}:

PATRICIA HART JORGENSEN, ITEC Rates

Chief Counsel O+1, 15 @ 3.50 = 52.50

Commission on State Mandates BILL MINIMUM OF \$140.00

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Date {UOn} {UOff})

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